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Department of the Treasury

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[Third Party Communication:

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-144533-08

Date:

December 26, 2008

TY:

Legend

Shareholder =
Distributing =
Controlled =
State X =
Country Y =
Date 1 =
Date 2 =
Date 3 =
Month A =
Month B =
Business A =
Business B =
Year 1 =
Year 2 =
w =
x =
y =
z =

Dear :

Taxpayer (hereinafter "Distributing") requests a ruling on the proper treatment of the proposed rescission of its distribution of the stock of its wholly-owned subsidiary, Controlled, to its foreign parent, Shareholder. The distribution occurred in Year 2. Distributing requests a ruling to avoid the disaffiliation of Controlled from the Distributing consolidated group for purposes of section 1502 of the Internal Revenue Code.

Facts

Distributing is a wholly-owned domestic subsidiary of Shareholder, a Country Y corporation. Distributing is also the common parent of the Distributing and Subsidiaries consolidated group, a group which up until Date 3, included Controlled. Distributing is currently engaged in Business A. Prior to Distributing's transfer of certain assets and liabilities to Controlled, Distributing was also engaged in Business B as well as Business A.

On or about Date 2, Distributing transferred certain assets and liabilities of its Business B to its wholly-owned subsidiary, Controlled, which was incorporated on Date 1. Prior to this transfer, Controlled had issued w shares of stock to Distributing. Distributing transferred additional Business B assets and liabilities to Controlled on or about Date 3. Immediately after the completion of the Date 3 transfer, Distributing transferred all of the w issued and outstanding shares of Controlled common stock and no other assets to Shareholder, the sole shareholder and historic direct owner of Distributing, as a distribution in redemption of y of the x shares of the stock of Distributing held by Shareholder (hereinafter, the "Distribution" and "Redemption"). For federal income tax purposes, Distributing treated the Distribution and Redemption as a Section 355 tax free split off.

Distributing undertook the Distribution and Redemption to improve the management fit and focus of Business B and Business A. By forming Controlled and distributing it to Shareholder, Distributing facilitated the creation of separate management for Business B while allowing the management of Distributing to focus on Business A.

Controlled, Distributing and Shareholder subsequently entered into an agreement to rescind the Distribution and Redemption for the following business reasons:

A new chief executive officer and a new chief financial officer of Shareholder were appointed to their positions in Month A, Year 1 and Month B, Year 2, respectively. They believe that the changed business environment reduces the benefits that can be gained from separating Business B from Business A, increases the risks associated with separating Business B from Business A, and increases the negative impact of the increased operational and compliance costs that the Distribution and Redemption produce. At the time of the Distribution and Redemption, these additional costs were contemplated but were expected to be outweighed by the benefits to be achieved by the Distribution and Redemption.

The changes in the senior management of Shareholder and the changes in the business environment subsequent to the Distribution and Redemption cause the benefit of the separation of Controlled and Distributing to be outweighed by the increased risks and operational and compliance costs associated with separating Controlled from Distributing. Each of Shareholder, Distributing, and Controlled has now concluded that

Distributing and Controlled will benefit from Controlled's continuing to be a direct subsidiary of Distributing.

Rescission Transaction

Shareholder, Distributing, and Controlled wish to rescind the Distribution and Redemption. The parties intend to effect the rescission prior to the end of the Year 2 calendar and taxable year in which the Distribution and Redemption occurred, subject to the receipt of the requested ruling.

The proposed rescission, which is reflected in the Rescission Agreement submitted as an attachment to Taxpayer's ruling request, will encompass the following steps (the "Rescission Steps"):

- (a) Controlled shall cause its corporate secretary to reflect the voiding of the transfer by Distributing of w shares of Controlled common stock to Shareholder on Date 3, in the corporate minute book of Controlled such that Distributing shall be deemed the holder of such shares from the time such shares were originally issued to Distributing;
- (b) Shareholder shall deliver to Distributing stock certificate No. 2 representing w shares of Controlled common stock issued in Shareholder's name on Date 3, duly endorsed by Shareholder as returned to Distributing "in consideration of rescission";
- (c) Distributing shall deliver Certificate No. 2 to Controlled for cancellation and Controlled shall reissue to Distributing a stock certificate for w shares of Controlled common stock bearing the identical certificate number and original issuance date as the stock certificate held by Distributing prior to Date 3;
- (d) Distributing shall cause its corporate secretary to make a notation in the corporate minute book of Distributing that the cancellation of the y shares of Distributing common stock held by Shareholder prior to Date 3, is rescinded and void and such shares shall be treated as if such shares had not been cancelled;
- (e) Distributing shall rescind and reverse the retirement of the y shares of Distributing common stock held by Shareholder prior to Date 3, and rescind and reverse the reduction of Distributing's capital that occurred in accordance with State X General Corporation Law immediately after the Distribution and Redemption; and
- (f) Shareholder shall deliver to Distributing stock certificate No. 3 representing z shares of Distributing common stock issued in Shareholder's

name on Date 3, duly endorsed by Shareholder as returned to Distributing “in consideration of rescission;” and

(g) Distributing shall cancel Certificate No. 3 and reissue to Shareholder a stock certificate for x shares of Distributing common stock bearing the identical certificate number and original issuance date as the stock certificate held by Shareholder immediately prior to Date 3.

The Rescission Agreement further provides:

1. The Parties will carry out the Rescission Steps prior to the last day of Year 2, and the rescission will be effective as of the last day of Year 2;
2. The Parties will treat the rescission as a rescission of the Distribution and Redemption and not as an acquisition of Controlled stock by Distributing, a contribution to capital of Distributing by Shareholder, as a section 368(a)(1)(B) reorganization involving Controlled stock, or as any type of transaction other than a rescission of the Distribution and Redemption;
3. No Party has taken or will take any material position inconsistent with the position that would have existed had the Distribution and Redemption not occurred;
4. The Parties have examined the activities of Distributing, Controlled, Shareholder, and any other corporation controlled directly or indirectly by Shareholder during the period between the Distribution and Redemption on Date 3, and the effective date of the Rescission Agreement and have determined that no activities of such entities have occurred that are materially inconsistent with the rescission, and have agreed that no activities of such entities will occur prior to or after the rescission that are materially inconsistent with the rescission;
5. The Distributing consolidated return for the Year 2 taxable year will reflect Controlled as being a member of the consolidated filing group of which Distributing is the common parent for the entire Year 2 taxable year;
6. The purpose of the rescission is, and the effect of the rescission will be, to restore in all material respects the legal and financial arrangements among the parties that would have existed had the Distribution and Redemption never occurred and, in particular, the Rescission Agreement is intended to restore the legal and financial arrangements between Distributing and Shareholder that would have existed had Shareholder not received the Date 3, distribution of the stock of Controlled, and to cause the legal and financial arrangements between Distributing and Shareholder to be identical in all

- material respects, from the date immediately before the Distribution and Redemption, to such arrangements that would have existed had the Distribution and Redemption not occurred, and the parties will take all reasonable actions necessary to effectuate these purposes;
7. As a result of the rescission, the stock bases of the stock issued by both Distributing and Controlled will be computed by their respective holders in all material respects as if the Date 3, Distribution and Redemption had not occurred;
 8. As a result of the rescission, all material items of income, deduction, gain, and loss of each member of the consolidated group of which Distributing is the common parent will be reflected on the Distributing consolidated federal income tax returns as if the Distribution and Redemption had not occurred; and
 9. The Parties may waive the condition of obtaining this requested letter ruling from the Service to effectuate the rescission but, in that event, all other conditions will remain in effect;

Representations

The following representations have been made regarding the proposed rescission of the Date 3 Redemption and Distribution:

1. The rescission will place Distributing, Controlled, and Shareholder in the *status quo ante* immediately prior to the Distribution and Redemption.
2. Controlled has not paid any consideration other than the distributed shares of Controlled to Shareholder in connection with the distribution and Shareholder has not made any capital contribution to Controlled since the distribution. No such consideration will be paid by Controlled, and no such capital contribution will be made prior to the rescission. Therefore, no transactions between Shareholder and Controlled, as shareholder and direct subsidiary respectively, other than the distribution itself, will need to be reversed in order to effect the rescission.
3. The parties will not add to the rescission any element that was not originally part of the Distribution and Redemption; Distributing, Controlled, and Shareholder will not make a payment as a condition of the rescission.
4. The rescission transaction will not involve any party that was not involved in the Distribution and Redemption.

5. Shareholder, Distributing and Controlled have duly executed the Rescission Agreement substantially in the form of the Rescission Agreement submitted as an attachment with its October 10, 2008 letter ruling request, and will implement the rescission in accordance with the terms of that executed Rescission Agreement.

Law and Analysis

The Service recognizes that a rescission may be given full effect in abrogating a transaction under certain conditions. When these conditions are met, the transaction is disregarded for federal income tax purposes. In this connection, Rev. Rul. 80-58, 1980-1 C.B. 181, states the general legal principles pertaining to the doctrine of rescission in the following terms:

The legal concept of rescission refers to the abrogation, canceling, or voiding of a contract that has the effect of releasing the contracting parties from further obligations to each other and restoring the parties to the relative positions that they would have occupied had no contract been made. A rescission may be effected by mutual agreement of the parties, by one of the parties declaring a rescission of the contract without the consent of the other if sufficient grounds exist, or by applying to the court for a decree of rescission.

The revenue ruling states that there are at least two conditions that must be satisfied for the remedy of rescission to apply to disregard a transaction for federal income tax purposes. First, the parties to the transaction must return to the status quo ante; that is, they must be restored to "the relative positions they would have occupied had no contract been made." Second, this restoration must be achieved within the taxable year of the transaction.

Here, the original split off, which occurred on Date 3, was done pursuant to a contractual agreement entered into among Shareholder, Distributing and Controlled. Pursuant to the terms of this contractual agreement: (1) Shareholder transferred y of the x shares it held of Distributing stock to Distributing in consideration for Distributing's distribution to it of all of the outstanding stock of Controlled (the Redemption); and (2) Distributing distributed to Shareholder all of the outstanding stock of Controlled in consideration for Shareholder transferring to it y shares of its stock (the split off).

As of the last day of Year 2, in accord with the terms of the rescission agreement, Shareholder and Distributing will be restored to the relative positions they would have occupied if the stock of Controlled had never been distributed to Shareholder. In addition, this restoration will be achieved within the same taxable year. Therefore, the legal doctrine of rescission applies to (1) disregard the redemption of y shares of Distributing stock; (2) disregard the distribution of the stock of Controlled to

Shareholder, and (3) prevent the termination of Controlled's status as a member of Distributing's consolidated group.

Rulings

Based solely on the information submitted and the representations set forth above, and the parties' restoration, before the end of the taxable year, of the relative positions they would have occupied if the stock of Controlled had not been issued (Rev. Rul. 80-58, 1980-1 C.B. 181), we rule as follows regarding the Rescission Transaction:

1. For federal income tax purposes, (i) the Distribution and Redemption shall be disregarded; (ii) the w shares of stock of Controlled that Distributing held on Date 3, shall be treated as continuing to be outstanding and owned by Distributing during the period from Date 3 through and including the effective date of the Rescission Agreement; and (iii) Controlled will be treated as having remained a wholly-owned subsidiary of Distributing and a member of the Distributing consolidated group at all times during the Year 2 taxable year.

Caveat

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 6
(Corporate)

cc: